

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

David Johnson,)	Civil Action No.: 8:10-1277-HMH-BHH
)	
Plaintiff,)	
)	
vs.)	<u>REPORT AND RECOMMENDATION</u>
)	<u>OF MAGISTRATE JUDGE</u>
James Metts, et al.,)	
)	
Defendants.)	

The Plaintiff brought this action seeking relief pursuant to Title 42, United States Code, Section 1983. On October 4, 2010, a copy of an Order granting the Defendant Metts' motion for extension of time was mailed to Plaintiff's last known address (David Johnson, 66202, Lexington County Detention Center, P.O. Box 2019, F Pod, Lexington, SC 29701). (Dkt. # 39.) The envelope containing this order was returned to the court as the Plaintiff is apparently no longer incarcerated at the Lexington County Detention Center. On October 21, 2010, the Defendant Metts filed a motion to dismiss for lack of prosecution. (Dkt. # 45.) On October 21, 2010, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), an order was mailed to the Plaintiff at the Lexington County Detention Center advising him of the summary dismissal procedure and the possible consequences if he failed to respond adequately. (Dkt. # 48.) On November 2, 2010, the envelope containing these two orders was also returned to the court.

The record reveals that the plaintiff was advised by order dated May 18, 2010, of his responsibility to notify the court *in writing* if his address changed and by a second order dated June 17, 2010. (Dkt. # 1 and 9.)

Based on the foregoing, it appears the Plaintiff no longer wishes to pursue this action. Accordingly, it is recommended that this action be dismissed *with prejudice* for lack

of prosecution and for failure to comply with this Court's orders, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and the factors outlined in *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir.1982). See *Ballard v. Carlson*, 882 F.2d 93 (4th Cir. 1989). Further, if the District Court adopts this report, it is recommended that the Defendant's Trinity Food Service's Motions to Dismiss (Dkt. # 44 and 52) and the Defendant Metts' Motion to Dismiss (Dkt. # 45) be DENIED as moot.

s/Bruce H. Hendricks
United States Magistrate Judge

November 9, 2010
Greenville, South Carolina